

ORDINANCE N° 58-1067 CONSTITUTING AN INSTITUTIONAL ACT ON THE CONSTITUTIONAL COUNCIL

As amended by Ordinance n° 59-223 of February 4th 1959 and Institutional Acts n°s 74-1101 of December 26th 1974, 90-383 of May 10th 1990, 95-63 of January 19th 1995, 2007-223 of February 21st 2007, 2008-695 of July 15th 2008 and 2009-1523 of December 10th 2009.

TITLE 1 : ORGANISATION OF THE CONSTITUTIONAL COUNCIL

Section 1

The members of the Constitutional Council, other than ex officio members, shall be appointed by the President of the Republic, the Presidents of the National Assembly and the Senate.

The President of the Constitutional Council shall be appointed by the President of the Republic. He shall be selected from among members of the Council, whether appointed or ex officio members.

The appointments referred to hereinabove shall be published in the *Journal officiel*.

Section 2

The first Constitutional Council shall comprise three members appointed for a term of three years, three members appointed for a term of six years and three members appointed for a term of nine years. The President of the Republic, the Presidents of the National Assembly and the President of the Senate shall each appoint one member of each of these three groups.

Section 3

Before taking up office, the appointed members of the Constitutional Council shall take the oath before the President of the Republic.

They shall swear to properly and faithfully carry out their duties, to perform them in an impartial manner in accordance with the Constitution, to preserve confidentiality as to proceedings and voting, to refrain from taking any public stance, from giving any consultation on matters coming under the jurisdiction of the Council.

A formal record shall be made of the swearing of the oath.

Section 4

The office of member of the Constitutional Council shall be incompatible with that of member of the Government or of the Economic and Social Council.

The members of the Government or of the Economic and Social Council or the holders of elective office appointed to the Constitutional Council shall be deemed to have opted for membership of the latter body unless otherwise stated within the eight days of the publication of their appointment.

Members of the Constitutional Council who take up office as a member of the Government or are appointed to the Economic and Social Council shall be replaced .

Professional incompatibilities affecting members of Parliament shall also apply to members of the Constitutional Council.

Section 5.

Throughout their term of office members of the Constitutional Council shall not be appointed to any public post nor, if they are civil servants, benefit from any discretionary promotion.

Section 6.

The President and members of the Constitutional Council shall receive respectively an allowance equal to the salary paid to the two highest ranking categories of civil servants.

Said allowances shall be reduced by one half for those members of the Council who continue to maintain a professional activity compatible with their office.

Section 7

A Decree issued in the Council of Ministers on the recommendation of the Constitutional Council shall specify the obligations of the members of the Constitutional Council in order to guarantee the independence and dignity of their office. These obligations shall include the prohibition on members of the Constitutional Council taking public stances on issues which have been or may be the object of a decision of the Council or giving consultations on such matters.

Section 8

Members of the Constitutional Council shall be replaced no later than eight days before the expiry of their term of office.

Section 9

A member of the Constitutional Council may resign from office by a letter addressed to the Council. The appointment of his replacement shall take place no later than one month from such resignation. Said resignation shall become effective upon the appointment of the replacement member.

Section 10

The Constitutional Council shall formally record the automatic resignation of a member who carries on a profession or holds a position or elective office incompatible with membership of the Council or who does not enjoy his full civil and political rights. Such a member shall be replaced within eight days.

Section 11

The rules set forth in Article 10 shall apply to those members of the Constitutional Council who are definitively prevented from performing their duties by reason of a permanent physical disability.

Section 12

Members of the Constitutional Council appointed to replace members whose term of office has ended before the normal date shall serve the remainder of the unserved term. Upon the expiry of this term, they may be appointed as members of the Constitutional Council if they have served in said capacity for less than three years.

TITLE II : THE OPERATION OF THE CONSTITUTIONAL COUNCIL

Chapter 1 : Common provisions.

Section 13

The Constitutional Council shall meet when summoned to do so by its President or, in cases of an impediment affecting the latter, by its oldest member.

Section 14

Decisions and opinions of the Constitutional Council shall be given by no fewer than seven members, except in cases of force majeure duly recorded in the minutes.

Section 15

A Decree issued by the Council of Ministers, on the recommendation of the Constitutional Council, shall determine the organization of the Secretariat General.

Section 16

The appropriations necessary to finance the operation of the Constitutional Council shall be entered in the general budget. The President shall be vested with the power to order expenditure.

Chapter II : Rulings as to constitutionality

Section 17

Institutional Acts enacted by Parliament shall be transmitted to the Constitutional Council. The letter transmitting the same shall indicate, if need be, whether the matter is one of urgency.

Regulations and amendments to them enacted by one or other of the Houses of Parliament shall be transmitted to the Constitutional Council by the President of the relevant House.

Section 18

When a statute is referred for review by the Constitutional Council on the initiative of members of Parliament, the referral shall be made by one or more letters containing the signatures of no fewer than sixty Members of the National Assembly or sixty Senators.

When the Constitutional Council receives a referral pursuant to Articles 54 or 61 (paragraph 2) of the Constitution, it shall immediately inform the President of the Republic, the Prime Minister and the Presidents of the National Assembly and the Senate. The latter shall inform the members of their respective Houses.

Section 19

Constitutional review shall proceed on the basis of a report from one of the members of the Council within the time allotted in paragraph 3 of Article 61 of the Constitution.

Section 20

The Constitutional Council shall give reasons for its decision

Section 21

The publication of a decision of the Constitutional Council ruling that a provision is not unconstitutional shall terminate the period of suspension of promulgation of the statute involved.

Section 22

When the Constitutional Council rules that a statute referred to it for review contains a provision which is unconstitutional and unseverable from the statute as a whole, said statute shall not be promulgated.

Section 23

In the event of the Constitutional Council ruling that a statute referred to it for review contains a provision which is unconstitutional without holding it to be unseverable from the rest of the statute, the President of the Republic may promulgate said statute without the impugned provision or ask the two Houses to proceed to a further reading.

In cases where the Constitutional Council rules that a Parliamentary regulation referred to it contains a provision which is unconstitutional, this provision shall not be applied by the House which adopted the same.

Chapter II bis : On priority preliminary rulings on the issue of constitutionality (coming into force on March 1st 2010)

Part 1 : Provisions applicable before courts coming under the supervisory jurisdiction of the Conseil d'Etat or the Cour de cassation

Section 23-1 (coming into force on March 1st 2010)

Before Courts coming under the supervisory jurisdiction of the Conseil d'Etat or the Cour de cassation, the argument that a statutory provision infringes the rights and freedoms guaranteed by the Constitution shall, on pain of inadmissibility, be raised in writing and accompanied by a reasoned justification of this argument. Such an argument may be raised for the first time before a Court of Appeal. It cannot be raised by the court *proprio motu*.

Before a Court coming under the supervisory jurisdiction of the Cour de cassation, when the Public Prosecutor is not a party to these proceedings, the matter shall be brought to his attention once the argument has been raised so that he may make his opinion known.

If such an argument is raised during a preliminary investigation into a criminal offence, the matter shall be brought before the relevant appellate court.

Such an argument may not be raised before a Cour d'assises. In the event of appeal against a decision handed down at first instance by a Cour d'assises, it may be raised in writing in a document accompanying the notice of appeal. This document shall be immediately transmitted to the Cour de cassation

Section 23-2 (coming into force on March 1st 2010)

The Court shall rule without delay, giving reasons for its ruling, as to the transmission to the Conseil d'Etat or the Cour de cassation of the application for a priority preliminary ruling on the issue of constitutionality. Such transmission shall require that the following conditions be met :

1° The challenged provision is applicable to the litigation or proceedings underway, or is the grounds for said proceedings;

2° Said provision has not previously been found to be constitutional in the holding of a decision of the Constitutional Council, except in the event of a change of circumstances

3° The matter is of a serious nature

In all events, the court involved must, when confronted firstly with arguments challenging the conformity of a statutory provision with the rights and freedoms guaranteed by the Constitution and secondly with the international commitments entered into by France, rule in priority on the matter of the transmission of the application for a priority preliminary ruling on the issue of constitutionality to the Conseil d'Etat or Cour de cassation.

The decision to transmit the application shall be sent to the Conseil d'Etat or the Cour de cassation within eight days of the handing down of said decision, together with the submissions of the parties. Refusal to transmit the application may only be challenged upon appeal against the decision settling all or part of the litigation involved

Section 23-3 (coming into force on March 1st 2010)

When the application for a priority preliminary ruling is transmitted, the court shall stay its ruling until receipt of the decision of the Conseil d'Etat or Cour de cassation or of the Constitutional Council, if the matter has been referred to the latter. The preliminary

investigation underway shall not be suspended and the court may order any necessary temporary measure or measure of conservation.

However there shall be no stay of ruling when the person involved is in custody due to the proceedings underway, nor when the purpose of such proceedings is to discharge a custodial measure

The court may also rule without waiting for the decision on the application for a priority preliminary ruling on the issue of constitutionality if statute law or regulations provide that it should give its ruling within a specified time or as a matter of urgency. If the court of first instance rules without waiting for said decision on the priority preliminary ruling and its decision is appealed against, the appellate court shall stay its ruling. It may however not stay its ruling if it itself is required to rule on issues which must be dealt with forthwith.

Furthermore, if staying the ruling would lead to irremediable or patently excessive consequences as regards the rights of one of the parties, the court deciding to transmit the application for a priority preliminary ruling as to constitutionality may rule on those issues which need to be dealt with forthwith.

If an appeal on a point of law has been made to the Cour de cassation and the trial judges have handed down their decision without waiting for the decision of the Conseil d'Etat or the Cour de cassation or of the Constitutional Council, if the matter has been referred to the latter, the Cour de cassation shall stay its ruling on said appeal pending a ruling on the application for a priority preliminary ruling on the issue of constitutionality. This shall not however be the case when the applicant is deprived of his freedom because of the proceedings underway and statute law provides that the Cour de cassation shall give its ruling within a specified time."

Part 2 : Provisions applicable before the Conseil d'Etat and the Cour de cassation

Section 23-4 (coming into force on March 1st 2010)

Within three months of receipt of the transmission provided for in section 23-2 or in the final paragraph of section 23-1, the Conseil d'Etat or the Cour de cassation shall rule on the referral of the application made to the Constitutional Council for a priority preliminary ruling on the issue of constitutionality. This referral shall be made when the conditions provided for in 1° and 2° of Article 23-2 have been met and the issue raised is new or of a serious nature.

-Section 23-5 (coming into force on March 1st 2010)

The argument based on the infringement by a statutory provision of the rights and freedoms guaranteed by the Constitution may be raised, including for the first time before the Cour de cassation, when a case is being heard before the Conseil d'Etat or Cour de cassation. Said argument shall be presented, on pain of being inadmissible, in a separate and reasoned submission. It cannot be raised by the court *proprio motu*.

In all events the Conseil d'Etat or Cour de cassation must, when asked to rule on arguments claiming firstly that a provision infringes the rights and freedoms guaranteed by the Constitution, and secondly that it runs counter to the international commitments entered into by France, rule in priority on the transmitting to the Constitutional Council of the application for a priority preliminary ruling on the issue of constitutionality.

The Conseil d'Etat or the Cour de cassation shall have a period of three months as from the formal raising of the argument to hand down its decision. The Constitutional Council shall be asked to rule on the application for a priority preliminary ruling on the issue of constitutionality once the conditions provided for in 1° and 2° of section 23-2 have been met and the issue raised is new and of a serious nature.

When the matter has been referred to the Constitutional Council, the Conseil d'Etat or the Cour de cassation shall stay their ruling until the Constitutional Council has given its decision. This shall not however be the case when the applicant is deprived of his freedom because of the proceedings underway and statute law provides that the Cour de cassation shall give its ruling within a specified time. If the Conseil d'Etat or the Cour de cassation is required to rule in a matter of urgency, there can be no stay of ruling.

Section 23-6 (coming into force on March 1st 2010)

The First President of the Cour de cassation shall receive applications transmitted to the Cour de cassation as provided for in section 23-2 and in the last paragraph of section 23-1. The submission mentioned in section 23-5, presented with applications addressed to the Cour de cassation, shall also be transmitted to the same

The First President shall immediately inform the Chief Public Prosecutor.

The Cour de cassation shall rule with a Bench presided by the First President and the Presidents of the Chambers and two Judges from each of the Chambers specifically concerned by the application.

However the First President may, if he feels that the solution to the issue raised is self-evident, refer this matter to a Bench composed of himself, the President of the Chamber specifically concerned and a further judge from the latter.

For the application of the two foregoing paragraphs, the First President may be replaced by a delegate appointed by him from among the Presidents of the various Chambers of the Cour de cassation. Said Presidents may also be replaced by delegates appointed by them from among judges sitting in said Chambers.

- Section 23-7 (coming into force on March 1st 2010)

The reasoned decision of the Conseil d'Etat or the Cour de cassation to refer the matter to the Constitutional Council, accompanied by the submissions of the parties, shall be transmitted to the Council. The Constitutional Council shall be provided with a copy of the reasoned decision at the basis of the refusal of the Conseil d'Etat or Cour de cassation to refer the application for a priority preliminary ruling to it. In the event of failure by the Conseil d'Etat or the Cour de cassation to rule within the time allotted by sections 23-4 and 23-5, the application shall be transmitted to the Constitutional Council.

The decision of the Conseil d'Etat or the Cour de cassation shall be communicated to the court which transmitted the application for a priority preliminary ruling and shall be notified to the parties within eight days of the making of said ruling.

Part 3 : Provisions applicable before the Constitutional Council

Section 23-8 (coming into force on March 1st 2010)

When the Constitutional Council has been asked to make a priority preliminary ruling under the provisions hereof, it shall immediately inform the President of the Republic, the Prime Minister and the Presidents of the National Assembly and the Senate. Said persons may send the Constitutional Council their remarks on the application for a priority preliminary ruling on the issue of constitutionality made to the Council.

When a provision of a law of the land of New Caledonia is the object of such an application, the Constitutional Council shall also inform the President of the Government of New Caledonia, the President of the Congress and the Presidents of Provincial Assemblies.

- Section 23-9 (coming into force on March 1st 2010)

When the Constitutional Council has been asked to rule on an application for a priority preliminary ruling on the issue of constitutionality, the termination for any reason whatsoever of the proceedings in which this issue was raised shall have no effect on the examination of this issue.

- Section 23-10 (coming into force on March 1st 2010)

The Constitutional Council shall give its ruling within three months of the referral being made to it. The parties shall be given a full hearing and invited to address their arguments to the Council. The hearing shall be held in public except for exceptional cases specified by the internal rules of procedure of the Constitutional Council

Section 23-11 (coming into force on March 1st 2010)

The Constitutional Council shall give reasons for its decision. The parties shall be notified of this decision, and the same shall be communicated either to the Conseil d'Etat or the Cour de cassation and, if need be, to the court before which the application for a priority preliminary ruling on the issue of constitutionality was first made.

The Constitutional Council shall also communicate its decision to the President of the Republic, the Prime Minister and the Presidents of the National Assembly and the Senate together with, in the case provided for in the final paragraph of section 23-8, the authorities mentioned therein.

The decision of the Constitutional Council shall be published in the *Journal officiel* and, if need be, in the *Journal officiel* of New Caledonia.

Section 23-12

When the Constitutional Council is asked to make a priority preliminary ruling on the issue of constitutionality, the State contribution to the remuneration under the system of legal aid of those judicial auxiliaries assisting in the making of the application shall be increased in the manner provided for by regulations.

Chapter III : Review of statutory provisions

Section 24

In the cases provided for in paragraph 2 of Article 37 of the Constitution, referral to the Constitutional Council shall be made by the Prime Minister.

Section 25

The Constitutional Council shall give its decision within one month. When the Government declares the matter to be one of urgency the time allotted shall be eight days.

Section 26

The Constitutional Council shall, by a reasoned decision, rule that the provisions referred to it are of a statutory or regulatory nature.

Chapter III bis : Review of the manner in which Bills are tabled.

Section 26-1

When referral is made to it in accordance with paragraph 4 of Article 39 of the Constitution, the Constitutional Council shall immediately inform the Prime Minister and the Presidents of the National Assembly and the Senate.

The reasoned decision of the Constitutional Council shall be notified to the Prime Minister and the Presidents of the National Assembly and the Senate. It shall be published in the *Journal officiel*.

Chapter IV : Review of decisions of inadmissibility.

Section 27

In the cases provided for by paragraph 2 of Article 41 of the Constitution, debate on a Private Member's Bill or an amendment which is held to be inadmissible by the Government shall be immediately adjourned.

The Authority making the referral to the Constitutional Council shall immediately inform the Authority which is also empowered to act under Article 41 of the Constitution.

Section 28

The Constitutional Council shall give a reasoned decision within eight days.

Section 29

This reasoned decision shall be notified to the House involved and to the Prime Minister.

Chapter V : The exercising of the powers of the Constitutional Council as regards the election of the President of the Republic.

Section 30

The powers of the Constitutional Council as regards the election of the President of the Republic shall be determined by the Institutional Act pertaining to this election.

Section 31

When a referral is made by the Government in the cases provided for in Article 7 of the Constitution for a ruling that an impediment prevents the President of the Republic from performing his duties, the Constitutional Council shall give said ruling by an absolute majority of its members.

Chapter VI : Litigation as to the election of Members of the National Assembly and Senators.

Section 32.

The Minister of the Interior and the Minister for Overseas Territories shall without delay notify the House involved of the names of persons proclaimed elected.

The formal records of the Vote Counting Committees, to which the representative of the State shall append a copy of the birth certificate and form n° 2 of the Criminal record of the persons elected and their substitutes, shall be made available for a period of ten days to persons

registered on the electoral roll and persons having declared their intention to stand in said election.

Upon the expiry of this allotted period of time, the formal records and all appendices thereof shall be filed with the Departmental or Territorial Archive Service. They shall only be communicated to the Constitutional Council at the request of the latter.

Section 33:

The election of a Member of the National Assembly or a Senator may be challenged before the Constitutional Council during the ten days following the proclamation of the results of the ballot.

All persons registered on the electoral roll and all persons standing for election shall be entitled to challenge an election held in their constituency.

Section 34:

Referral to the Constitutional Council shall only be made in writing and addressed to the Secretary General of the Constitutional Council or the representative of the State.

The representative of the State shall inform the Secretary General by electronic means of the referral and transmit the same.

The Secretary General of the Council shall without delay inform the House involved of the referrals of which he has been notified.

Section 35

Referrals shall contain the surname, forename(s) and status of the applicant, the names of the elected candidates whose election is challenged and the arguments raised in support of this challenge.

The applicant shall append to the referral the documents produced in support of his challenge. The Council may exceptionally grant an extension of time for the production of some of the supporting documents.

Such referral shall not have any suspensive effect. It shall not require payment of any duties or registration fees.

Section 36

The Constitutional Council shall constitute three sections each comprising three members drawn by lot. Separate lots shall be drawn between members appointed by the President of the Republic, the President of the National Assembly and the President of the Senate.

Each year during the first fortnight of October, the Constitutional Council shall draw up a list of ten assistant Rapporteurs chosen from among the Maîtres des requêtes of the Conseil d'Etat and the Conseillers référendaires of the Court of Audit. Said assistant Rapporteurs shall not participate in voting by the Council

Section 37

Upon receipt of a referral, the President of the Council shall assign the same to one of the abovementioned sections and appoint a Rapporteur who may be chosen from among the assistant Rapporteurs.

Section 38

The sections shall examine the cases referred to them prior to the bringing of the same before the full Council.

The Council may however, without any preliminary investigation into a referral and without hearing the parties involved, dismiss by a reasoned decision those referrals which are inadmissible or contain complaints as to facts which patently cannot have influenced the outcome of an election. The House involved shall be immediately notified of the decision.

Section 39

In all other cases, the member of Parliament whose election is disputed shall be notified of the referral, as shall his substitute. The section shall grant them a period of time to take cognizance of the referral and accompanying documents filed with the Secretary General and put forward their written response.

Section 40

Once this written response has been received or upon expiry of the time allotted for the putting forward of the same, the report on the case shall be given to the Council which shall rule by a reasoned decision. Said decision shall be immediately notified to the House involved.

Section 41

When the Council upholds a challenge, it may, if need be, declare the election results to be void or modify the proclamation of the results made by the Vote Counting Committee and proclaim the new elected candidate.

Section 41-1

If the preliminary investigation into a complaint reveals that a candidate is in one of the situations referred to in paragraph 2 of Article L.O 128 of the Electoral Code, the Council may proclaim the ineligibility of said candidate in accordance with said provision and, in the event of the latter having been elected, hold this election to be void.

Section 42

The Council and the sections thereof may, if need be, order an enquiry and cause to be transmitted to it/them all documents and reports connected with the election, in particular campaign accounts drawn up by the candidates involved, together with all documents, reports or decisions as may have been collected or drawn up by the Committee set up under Article L 52-14 of the Electoral Code.

The Rapporteur shall be vested with due authority to take evidence from witnesses under oath. He shall make a formal record thereof and communicate the same to the candidates involved, who shall have three days to respond in writing.

Section 43

The Council and the sections thereof may appoint one of its/their members or an assistant Rapporteur to carry out further on-the-spot investigations.

Section 44

When hearing cases referred to it the Constitutional Council shall have jurisdiction over all matters and arguments raised on the making of the referral. In such cases, its decision shall be effective solely with respect to the election referred to it.

Section 45

Subject to any subsequent ineligibility of the candidate and the substitute thereof, the Constitutional Council shall rule on the lawfulness of the election of both the candidate and the substitute thereof.

Chapter VII :Monitoring the holding of Referenda and proclaiming the results thereof.

Section 46

The Constitutional Council shall be consulted by the Government on the holding of referenda. It shall immediately be informed of all measures taken for that purpose.

Section 47

The Constitutional Council may put forward its remarks on the list of organizations authorized to use official publicizing facilities.

Section 48

The Constitutional Council may appoint one or more delegates chosen, with the agreement of the relevant Ministers, from judges from the Courts of Law or Administrative Courts, for the purpose of monitoring the operations involved in holding a referendum

Section 49.

The Constitutional Council shall directly monitor the taking of a general census.

Section 50.

The Constitutional Council shall examine and definitively settle all complaints.

When the Constitutional Council ascertains the existence of irregularities occurring during the holding of the referendum, it shall decide whether, in view of the nature and seriousness of such irregularities, the holding of the referendum should be maintained or held to be partially or entirely void.

Section 51

The Constitutional Council shall proclaim the results of a referendum. Said proclamation shall be included in the Decree promulgating the statute in favour of which the people have voted.

Chapter VIII : Consultation of the Constitutional Council in exceptional circumstances.

Section 52

When consulted by the President of the Republic in the cases provided for in paragraph 1 of Article 16 of the Constitution, the Constitutional Council shall meet immediately.

Section 53

It shall give its opinion on compliance with the requirements set forth in the provision referred to in the foregoing paragraph. This opinion shall be reasoned and made public.

Section 54

The President of the Republic shall inform the Constitutional Council of measures which he contemplates taking.

The Constitutional Council shall give its opinion without delay.

TITLE III – MISCELLANEOUS AND TEMPORARY PROVISIONS

Section 55

The manner of application of this Ordinance may be specified by a Decree in the Council of Ministers after consultation with the Constitutional Council and seeking the opinion of the Conseil d'Etat.

Section 56

The Constitutional Council shall complete by its internal rules of procedure those rules of procedure "applicable before it" laid down by Title II hereof. It shall in particular specify the conditions governing the enquiries and investigations provided for in sections 42 and 43 under the supervision of a Rapporteur.

Section 57 (obsolete)

Section 58

Articles L 211-3, L 212-1, L 212-2, L 212-3, L 212-4, L 213-3, L 214-1, L 214-3, L 214-4, L 214-5, L 214-9 and L 214-10 of the National Heritage Code shall apply to the Archives of the activity of the Constitutional Council. These archives may be freely consulted upon the expiry of the period of time fixed in 1° of I of Article L 213-2 of said Code.

Section 59 (obsolete)

Section 60 (obsolete)

Section 61

This Ordinance shall be published in the Journal officiel of the French Republic and implemented as an Institutional Act.

